REMARKS

In the Office Action[1], the Examiner rejected claims 2 and 4-9 under 35 U.S.C. §

103(a) as being unpatentable over *Satsukawa et al.* (U.S. 6,379,249, "*Satsukawa*"),

Kami et al. (US 5,853,324, "*Kami*") in further in view of *GameSpot* and *GiantBomb*

reviews of *Max Payne*. Claims 2 and 4-9 remain pending.

Applicants respectfully traverse the Examiner's rejection of claims 2 and 4-9

under 35 U.S.C. § 103(a) as being unpatentable over *Satsukawa* and *Kami* in view of

Max Payne. A *prima facie* case of obviousness has not been established with respect

to these claims.

"The key to supporting any rejection under 35 U.S.C. § 103 is the clear

articulation of the reason(s) why the claimed invention would have been obvious. . . .

[R]ejections on obviousness cannot be sustained with mere conclusory statements."

M.P.E.P. § 2142, 8th Ed., Rev. 6 (Sept. 2007) (internal citation and inner quotation

omitted). "The mere fact that references <u>can</u> be combined or modified does not render

the resultant combination obvious unless the results would have been predictable to

one of ordinary skill in the art." M.P.E.P. § 2143.01(III) (emphasis in original). "In

determining the differences between the prior art and the claims, the question under

35 U.S.C. § 103 is not whether the differences <u>themselves</u> would have been obvious,

but whether the claimed invention <u>as a whole</u> would have been obvious." M.P.E.P. §

2141.02(I) (emphasis in original).

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[1] The Office Action contains a number of statements reflecting characterizations of the related art and the claims. Regardless of whether any such statement is identified herein, Applicants declines to automatically subscribe to any statement or characterization in the Office Action.

"[T]he framework for objective analysis for determining obviousness under 35 U.S.C. § 103 is stated in *Graham v. John Deere Co.*, 383 U.S. 1, 148 U.S.P.Q. 459 (1966). . . . The factual inquires . . . [include determining the scope and content of the prior art and] . . . [a]scertaining the differences between the claimed invention and the prior art." M.P.E.P. § 2143.01(II). "Office personal must explain why the difference(s) between the prior art and the claimed invention would have been obvious to one of ordinary skill in the art." M.P.E.P. § 2143.01(III).

Applicants respectfully request that the Examiner reconsider and withdraw the rejection of claims 2 and 4-9 under 35 U.S.C. § 103(a) because a *prima facie* case of obviousness has not been established with respect to these claims. The differences between the claimed invention and the prior art have not been properly ascertained. Accordingly, no proper reason has been articulated as to why the differences would have been obvious to one skilled in the art at the time of invention.

Claim 7 recites a computer program product including, "displaying circumstances . . . wherein the <u>time scale</u> of the <u>player</u> in said displaying circumstances <u>remains unchanged</u> so that the <u>player speed appears relatively faster</u> than the <u>speed</u> of the <u>enemy-character</u> and the <u>speed</u> of each one of the <u>bullets fired</u> from the enemy-character" (emphasis added).

The Examiner correctly states "Satsukawa and Kami . . . [are] silent with respect to . . . displaying circumstances . . . wherein the time scale of the player in said displaying circumstances remains unchanged so that the player speed appears relatively faster than the speed of the enemy-character and the speed of each one of

the bullets fired from the enemy-character." Office Action, pp. 4-5. The Office Action

alleges that *Max Payne* teaches these elements. Office Action, p. 5. This is not correct.

The Office Action alleges:

> 'Bullet Time' was incorporated into video games to provide a new character ability in which players could effectively slow down time and move around in a suspended time environment (*see Kasavin Gamespot review*). This gave the appearance of the player character to move faster then other characters (including enemy-characters). Through this process the player was able to appear relatively faster in speed and each one of the bullets fired from opposing characters (see Giant Bomb review) (emphasis added).

Office Action, page 5. However, this characterization of *Max Payne*, as related by the

Gamespot and *GiantBomb* reviews, is incorrect.

The *Gamespot* review states "'bullet time' . . . temporarily puts everything in slow

motion," further stating, "[in] Bullet time . . . all the action in the same is slowed, you can

still aim as quickly as you can move your mouse," Emphasis added, Gamespot, second

and third paragraphs. Thus, the *Gamespot* review clearly discloses that although the

player may be able to aim at enemy characters in real time, the 'Bullet Time' in *Max*

Payne puts everything, including player and enemy characters, in slow motion. Thus,

all of the action in the game is slowed. In contrast, claim 7 requires that "the time scale

of the player in said displaying circumstances remains unchanged." Therefore, the

Gamespot review does not disclose, suggest, or make obvious that the player character

in *Max Payne* includes "displaying circumstances . . . wherein the time scale of the

player in said displaying circumstances remains unchanged so that the player speed

appears relatively faster than the speed of the enemy-character and the speed of each

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one of the <u>bullets fired</u> from the enemy-character," as recited in claim 7 (emphasis added.)

The Office Action also relies upon the Giant Bomb review of *Max Payne* as allegedly teaching elements of claim 7. Office Action, p. 5. However, this is also incorrect. That is, consistent with the *Gamespot* review, the Giant Bomb review discloses that the *Max Payne* game moves in slow motion during "bullet-time." *Giant Bomb* states "bullet-time, which causes the game to temporary move in slow-motion, mak[es] it easier for the player to both dodge and aim shots," Giant Bomb, page 2. *Giant Bomb* therefore does not teach or suggest that "the time scale of the player in said displaying circumstances remains unchanged," as required by claim 7. Therefore, the *Giant Bomb* review also fails to disclose, suggest, or make obvious that the player character in *Max Payne* includes a "<u>time scale</u> of the <u>player</u> [that] <u>remains unchanged</u> so that the <u>player speed appears relatively faster</u> than the <u>speed</u> of the <u>enemy-character</u>, as recited in claim 7.

For at least the above reasons, the *Gamespot* and *GiantBomb* reviews of *Max Payne* fail to teach or even suggest at least this claim element, and thus fails to remedy the admitted deficiencies of *Satsukawa* and *Kami*.

In view of the mischaracterizations of the prior art, as set forth above, the scope and content of the prior art has not been properly determined, and the differences between the prior art and claim 7 has not been properly ascertained. Accordingly, no reason has been articulated as to why one of ordinary skill in the art would find it obvious to achieve the claimed combination, having only the benefit of the prior art. Therefore, no *prima facie* case of obvious has been established and the rejection of

independent claim 7 under 35 U.S.C. § 103 must be withdrawn. Claims 2 and 4-6 are also allowable at least due to their dependance from claim 7. Independent claim 8, while of different scope from claim 7, recites elements similar to those of claim 7 and is thus also allowable over *Satsukawa, Kami*, and *Max Payne* for reasons at least similar to those discussed above for claim 7. Claim 9 is allowable at least due to its dependence from claim 8.

In view of the foregoing, Applicant respectfully requests reconsideration and reexamination of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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Dated: December 3, 2004   By:_____
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